IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.326 OF 2005

Prakash alias Ramgonda
Sidgonda Patil (Chikeam) and Anr. Appellants

Versus

Krishnakumar alias Babgonda
Patil and Ors. Respondents

Mr.G.M.Savagave for appelalnts
Mr.V.B.Rajure for respondent Nos.1 to 3

CORAM : P.V.KAKADE, J.
DATE : 20TH JUNE, 2005.

P.C.:

1. The present appeal filed by the appellant against the judgment and order passed by Addl. District Judge, Kolhapur dated 30.10.2004 dismissing both the appeals and confirming the order of the lower court in for partition and separate possession of the respective sharers of the property.

2. I heard the learned counsel for both the parties. Perused the record.

3. The plaintiff filed the suit for partition and separate possession of the property. The defendant came with the case that there were earlier partitions effected amongst the parties and therefore, the suit was not tenable.

. The learned trial judge proceeded to adjudicate the dispute on merits and came to the conclusion that the plaintiffs had proved that the suit property was originally ancestral land and in partition it came to the share of defendant no.1. The plaintiffs have further proved that they were having 1/4th share in the suit property and were entitled to partition and separate possession of the suit land. The relief claimed for perpetual injunction however, was rejected by the trial court. The appeal was carried to the District Judge, Kolhapur. The learned District Judge heard both the sides and appeal preferred against the order after hearing the parties came to be dismissed. Hence the present appeal.

4. The only question involved in this appeal is whether there were previous partitions of the property involved and if not, whether the concurrent findings recorded by both the courts below are required to be confirmed? Evidently as well as admittedly there is absolutely no evidence on record to show that there were previous partitions amongst the parties and hence without further elaboration, I must note that both the courts below have properly appreciated the evidence and recorded the findings that the plaintiffs are entitled to 1/4th share in the suit property and separate possession thereof. In other words there is absolutely no substantial question of law involved in this appeal and as such the appeal stands dismissed.

5. Consequently the civil application no.561 of 2005 is also stands dismissed.

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